

THE HONORABLE ROBERT S. LASNIK

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

UNITED STATES OF AMERICA,)	No. CR19-159-RSL
Plaintiff,)	
v.)	PAIGE THOMPSON'S
PAIGE A. THOMPSON,)	SUPPLEMENTAL FILING IN
Defendant.)	SUPPORT OF HER OPPOSITION
)	TO THE GOVERNMENT'S
)	MOTIONS <i>IN LIMINE</i> #3

Paige Thompson, through counsel, files this supplemental filing in support of her opposition to the government's motion *in limine* ("MIL") No. 3, in which the government seeks to exclude evidence of the Office of the Comptroller of Currency's ("OCC's") \$80 million civil penalty of Capital One for its failure to establish information security standards in compliance with 12 C.F.R. Part 30, Appendix B.

This supplemental filing is necessary because in the four sets of discovery the defense received from the government in the weeks leading up to trial (Productions 15, 16, 17, and 18), the defense reviewed discovery this weekend that makes clear the OCC penalty is not only relevant and admissible for all of the reasons cited by Ms. Thompson in her initial opposition, but because the prosecution team aided Capital One in their attempts to negotiate their OCC penalty.¹ As such, the OCC penalty and

¹ The new discovery was produced by the government at USA-00015664 through USA-00015667 in Production 16 on June 1, 2022. The defense has done its best to quickly review and digest all of the recently-produced discovery in advance of trial, but this

1 Consent Order is not only relevant for Capital One's bias, but also to help show the lead
2 case agent's as well who intends to testify at trial. (Dkt. 253 at 2.)

3 Despite the government's representations to the Court on March 18, 2022 that
4 the "Office of the Comptroller of the Currency is a whole separate thing" and "we have
5 no connection to that," the lead case agent had an important connection to the OCC
6 investigation. The government was aware of that connection. (Dkt. No. 221 at 61; USA-
7 00015664-USA-00015667, attached as Ex. A.) Emails reveal that Capital One was
8 attempting to get information from the FBI to help with its response to the OCC's
9 investigation, which lead to the \$80 million penalty. Specifically, the Capital One
10 employee asked the case agent if the FBI had forensic evidence that Ms. Thompson
11 "did not get as much data as we thought" because she utilized Tor. (Ex. A at USA-
12 00015664.) The Capital One employee also advised the case agent that the "OCC
13 regulators asked today if the FBI would be providing [Capital One] with a copy of your
14 forensic report." (Ex. A at USA-00015664.) In response, the case agent advised he
15 would provide Capital One with some materials from the investigation into Ms.
16 Thompson and would follow up with the FBI's "computer scientist guys and get back
17 to you on most of your questions." (Ex. A at USA-00015664.)

18 Given these emails, there is a connection between the OCC investigation and
19 penalty and the lead FBI agent investigating Ms. Thompson. As such, the Consent order
20 and \$80 million fine are now not only relevant to Capital One's bias in attempting to
21 redirect blame onto Ms. Thompson, but also as to the case agent's bias in helping them
22 do so. Certainly, the defense should be permitted to explore these and other issues with
23 the case agent and Capital One witnesses and to discover exactly what help the FBI
24 provided to Capital One in its bid to resolve the OCC's investigation. For these

25 _____
26 discovery was not reviewed until after the defense filed its opposition to the
government's omnibus motions *in limine* filing, and thus necessitating this
supplemental filing.

1 additional reasons, the Court should deny government MIL No. 3 and permit into
2 evidence the OCC investigation, penalty, and the Consent Order.

3
4 DATED: June 5, 2022

Respectfully submitted,

5 /s/ *Mohammad Ali Hamoudi*

6 MOHAMMAD ALI HAMOUDI

7 /s/ *Christopher Sanders*

CHRISTOPHER SANDERS

8 /s/ *Nancy Tenney*

NANCY TENNEY

9 Assistant Federal Public Defenders

10 /s/ *Brian Klein*

11 BRIAN KLEIN

12 /s/ *Melissa Meister*

MELISSA MEISTER

13 Waymaker LLP

14 Attorneys for Paige Thompson
15
16
17
18
19
20
21
22
23
24
25
26